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22922 7590 07/08/2009 REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA KASULKE, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202				
EXAMINER THAKUR, VIREN A				
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1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhardtllaw.com

Office Action Summary

Application No.

10/626,304

Applicant(s)

STRAND ET AL.

Examiner

VIREN THAKUR

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 29, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 191-192 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 191 and 192 recite the limitation "having its distal portion coupled to said sheet of web material near the portion of said hood most distal from said first panel." This limitation is not clear as to whether "its" refers to the backing strip or to the skirt structure and therefore the claims are not clear as to what is being coupled to the sheet of web material. Also, it is noted that the limitation "near the portion of said hood" is a

relative term since it is not clear as to what can be considered near. These claims are also unclear as to what is considered "most distal."

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763), McMahon (US 6138439) and in further view of Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), May (US 5725312), and Malin (US 6183134).**

Regarding claims 148, 169, 179, 187, 212 and 214, Buchman et al. teach employing a hood having a fold located between first and second ends of said hood (See Figure 7), a first side panel (figure 7, item 12), a second side panel (figure 7, item

14), a bottom intermediate said first and second panels, a reclosable fastener structure including first and second interlockable fastener tracks (Figure 7, item 20), each having a skirt structure of skirt web material extending therefrom (figure 7, item 37 and 39), said skirt structures each including a distal portion that are coupled to said first and second end of said hood (figure 7, see hood coupled to skirts). Buchman et al. also teach that the covering/hood structure has been coupled to the skirt structures of the reclosable fasteners, as well.

Buchman et al. are silent in teaching areas of structural weakness located intermediate said fold and said first and second ends of said hood.

It is noted however, that Buchman et al. teach using perforations to facilitate removal of the tamper evident structure (figure 7, item 65 and paragraph 0067) and further teach in figure 7 wherein the reclosable fasteners extend into the hood structure. Therefore, it has been recognized to employ areas of structural weakness in a structure that covers the reclosable fastener for the purpose of facilitating removal of the covering element.

Nevertheless, Stolmeier et al. (Figure 7, item 72) and McMahon (Figure 19, item 132) have been relied on as evidence that it was conventional to provide structural weaknesses for removing a hood structure into which a pair of reclosable fastener tracks are extend. It would have been obvious that one would be required to use some expedient for removing the covering over the fastener structures (such as tearing or using scissors). Nevertheless, both Stolmeier et al. and McMahon teach providing lines of perforations which result in the hood being removed and the fastener structures

extending above the sheet of web material, thus facilitating access to the fastener structures. Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of Buchman et al. and thus facilitating access to the reclosable fastener.

Buchman et al. are silent in teaching wherein the hood and the bag are made from a single sheet of web material.

Nevertheless, it is noted that the use of a single sheet of web material, employed for providing a hood structure and contiguously providing the product containing walls of the bag has been a conventionally employed in the art, as evidenced by May (see figure 1). Belmont et al. provides further evidence that it was conventional in the art to employ a single sheet of web material for the purpose of making a hood structure into which reclosable fasteners have been placed (figure 3c). Even McMahon et al. teaches the use of a single sheet of web material (figure 19, item 82). Additionally, Weeks also teaches in figure 4, that a single sheet of web material can be employed which results in the formation of a hood structure to cover the reclosable fasteners and which further, can result in an side seam for filling product into the bag (Column 6, lines 40-43). Therefore to make the hood and the bag of Buchman et al. from a single sheet of web material would have been an obvious matter of choice and design, since it has been known in the art to make a bag and the hood that covers the reclosable fasteners from a single sheet of web material. It is noted that Buchman et al. uses a sheet of web material for the covering over the fastener structure as well as a sheet of web material

for the product containing section of the bag (figure 7). Nevertheless, the use of one sheet of web material for the fastener covering element has been employed only for the purpose of "pre-manufacturing" the tamper evidence reclosable fastener structure (paragraph 0019, "Prior to incorporation into the package..."). If one did not require the pre-manufacture of the slider, zipper and tamper evidence structure such as the covering sheet/hood/fold, then May, McMahon, Belmont et al. and Weeks teach providing the covering element/hood/fold and bag panels by using a single sheet of material. Therefore, since the art teaches using a single sheet of web material to provide the covering structure over the reclosable fasteners, as well as to provide the product containing portion of the bag, to therefore modify Buchman et al. and employ a single sheet of web material would have been an obvious matter of choice and/or design.

Furthermore, since the art already teaches employing a single sheet of material which can be used to make the product containing portion of the bag, as well as the covering structure for the reclosable fastener, while also having an opening on the side of the bag, through which the product can be filled into the bag, to therefore employ a single sheet would have been an obvious matter of choice and/or design to one having ordinary skill in the art. It is noted that Buchman already teaches that the opening is on the side of the bag structure, between the skirt structure and the side panel. Therefore, to employ a single sheet of web material for both the covering element and the bag, while still retaining this side opening required by Buchman would have been an obvious rearrangement of the particular orientation of the single bag structure for preserving a

side opening to the bag taught by Buchman. This is further evidenced by Weeks, who teaches a side opening to fill the bag.

Regarding the opening, Buchman et al. teach an opening located between the skirt structure and the second side panel of the sheet of web material (Paragraph 0065) for filling the bag with food (paragraph 0053).

Buchman et al. are silent in teaching a cheese bag, however, Buchman et al. teach filling the bag with food. Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31), as does Belmont et al. (column 4, lines 62-64). Once it was taught that one can package food products within the bag of Buchman et al. and based on the teachings of Provan et al. and Belmont et al., to package cheese would have been an obvious matter of choice and/or design that not have provided a patentable feature over the prior art.

Claims 148, 169, 179, 187, 212 and 214 further differ from the combination in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein said backing strip is coupled to said sheet of web material. As disclosed by applicants, the backing strip is bonded to the web material after the bag is filled for the purpose of closing the bag. Buchman et al. teach wherein an opening is provided between the side of the bag and the reclosable fastener for the purpose of filling the bag with a food product and then seals said open portion by sealing the bag to the extending skirt of the fastener (Paragraph 0065). Nevertheless, Malin (US 6183134) teaches sealing the web material employed for the bag to an extending backing strip instead of directly to the skirt structure (figure 3). Thus teaching the limitation of a backing strip which is coupled

to the skirt structure and wherein the backing strip is coupled to the sheet of web material. Therefore, to modify the previous combination of references and include a backing strip that adheres to the skirt for the same purpose of closing the bag after filling would have been an obvious matter of design to one having ordinary skill in the art. Additionally, it is noted that Malin also teaches using the backing strip to secure the web material of the bag to the reclosable zipper, for the purpose of improving the sealability of the bag to the zipper structure (column 3, lines 13-30). Since Buchman et al. already teaches filling the product into the bag through an opening between the fastener skirt structure and the sheet of web material, to therefore employ a backing strip to seal the web material for the bag to the reclosable fastener structure, would have been further obvious to one having ordinary skill in the art, for the added purpose of ensuring that the bag material is effectively sealed to the reclosable fastener structure.

Regarding claims 152 and 188, Buchman et al. teach wherein the skirt web material is integral to said reclosable fastener structure (see figure 7).

Regarding instant claims 153 and 189, the skirt structures are coupled to said fasteners, as shown in figure 7.

Regarding claims 154, 205, 206 and 210, Buchman et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two panels of the food bags comprise a multi-laminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light

of column 20, line 25 to column 21, line 8 and figures 19 and 20, items 320 and 322), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15). Nevertheless, Buchman et al. similarly teach tamper evidence on the skirt structures (figure 7, item 72) used to separate the skirt structures. Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a means of performing a similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 7 of Buchman et al. that the skirt (item 37 or 39 has an inside and outside surface.

Further regarding claims 205 and 206, which recite that the film is a multi-laminate film, it is noted that Belmont et al. also teaches the concept of employing multiple laminate films (column 3, lines 55-57 and column 4, lines 25-29). To therefore employ a multiple laminate film would have been an obvious matter of choice and/or design routinely determinable by experimentation for obtaining the desired properties that come as a result of employing multiple layers of films. Further regarding claim 206, which recites that one of the layers comprises a tear path, it is noted that Buchman et

al., Stolmeier et al. and McMahon et al. already teach employing a tear path on one layer. Therefore at least one layer of a multilaminated film would still have comprised a tear path.

Regarding instant claims 155 and 193, combination of references as applied to the independent claims, above, teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, the combination of references teach linear areas of structural weakness across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.) that are perforations having a predetermined pattern.

Regarding instant claims 157 and 194, since the combination of references teaches using a continuous sheet of web material for the bag and the hood and since the art teaches providing perforations (i.e. structural weaknesses) within the material used to cover the reclosable fastener structure (i.e hood) for the purpose of facilitating removal of the covering sheet, it would have been obvious to one having ordinary skill in to employ lines of structural weakness integral to the continuous sheet of web material for the purpose of removing the hood structure for accessing the reclosable zipper.

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the

perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would have to have been perforated.

Regarding claim 190, the skirt structures inherently include an inside and outside surface with upper and lower portions.

Regarding claims 207-209, Buchman et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 215, 216, 217 and 218, Buchman et al. are silent in teaching wherein the bottom comprises a gusset.

However, Stolmeier et al. on column 4, lines 38-39) teach providing a gusset for allowing easier access to the bag. Additionally, it has also been conventional in the art to use a gusset for the purpose of providing additional support to the bottom of the bag. Therefore, it would have been obvious to the ordinarily skilled artisan to provide a gusset for the purpose of providing easier access to the contents of the bag as well as to provide additional support to the bottom of the bag.

Regarding the references to Buchman et al. (US 20010053253) and Malin (US 6183134) it is noted that although the instant applicant claims priority back to provisional application 60133810 filed May 11, 1999, the claims to the backing strip were not disclosed prior to the PCT/US00/25393, filed September 15, 2000, which was a continuation in part application. Therefore the effective filing date of the instant applicant would be September 15, 2000.

7. Claims 191-192 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179,

187-190,193-197, 201-203 and 205-218 8, above, and in further view of Tilman (US 5024537).

Regarding claim 191, which recites that “a backing strip is adhesively joined to the inside surface of the skirt structure having its distal portion coupled to said sheet of web material near the portion of said hood most distal from said first panel,” it is noted that Malin, as applied in paragraph 6, above, already teaches a backing strip adhered to the skirt structure of the reclosable fastener structure for the purpose of facilitating securing of the sheet of web material thereto, as discussed above. Whether this backing strip was adhered to the inside or the outside of the skirt structure would not have altered its function of providing an expedient for sealing the sheet of web material thereon. Since this particular position of the backing strip would not have altered its function, to therefore secure the backing strip to the inside of the skirt structure would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

Regarding claim 192, Malin teaches that the backing strip extends below the lower portion of the skirt structure, as shown in figure 3.

Regarding the recitation in claims 191 and 192 of “having its distal portion coupled to said sheet of web material near the portion of said hood most distal from said first panel,” it is not clear as to whether this limitation is referring to the coupling of the distal portion of the skirt structure or the backing strip. Regardless, it is noted that Malin teaches the web material used to make the product containing portion of the bag secured to the backing strip. In addition, it is noted that Tilman teaches a tape structure

(figure 3, item 28) which also extends beyond the skirt structure of the reclosable fastener and to which the sheet of web material has been secured (figure 3, items 15, 28 and 35). The web material is secured along a length of the tape structure. Tilman also teaches that the tape can comprise materials that facilitate sealing of the tape to the bag (column 3, lines 48-55). Although the tape of Tilman also acts as a tamper evidence structure, Tilman thus teaches the added property of facilitating adhesion, which is similar to the teachings of Malin. Additionally, it is noted that the particular location of the seal between the backing strip and the sheet of web material would wholly have been dependent on the length of the sheet of web material, as well. Therefore, once the art recognized employing a backing strip which is secured to the skirt structure of a reclosable fastener and also is secured to one of the sides of the bag, as taught by Malin and Tilman, the particular location of the securing of the bag to the backing strip would have been an obvious matter of choice and/or design. Furthermore, the particular location along the backing strip to which the side panel of the bag was sealed would further have been an obvious matter of choice and/or design, since this location would have been wholly dependent on the particular length of the single sheet of web material employed to make the bag.

8. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-218, above, and in further view of Hayashi (US 6074097).

The combination of the references applied above are silent in teaching non-linear structural weaknesses across a predetermined dimension of said sheet of web material, as recited in claims 161 and 198 and wherein the perforations are microperforations, as recited in claims 167 and 204.

Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al. is relied on as evidence of the conventionality of providing a non-linear structural weakness (i.e. not a straight line), for opening a bag (Column 18, Lines 31-40; Figure 10). Hayashi et al. teach the preferred non-linear length and width (Figure 10, Item 106) and further wherein the perforations are micro-perforations, which provide greater tear strength and a more easily controlled line of weakness (Column 13, Line 35 to Column 14, Line 12). Therefore, it would have been obvious to further modify the prior art combination and include a microperforated and non-linear line of weakness at a predetermined length and width since Hayashi et al. teach that providing non-linear tear path and microperforations provides greater tear strength and control. Such a modification will ensure that the tearing of the area above the structural weakness will be controlled and will not remove more of the web material than intended by the manufacturer.

Regarding instant claims 162 and 199, the predetermined dimension is considered the width of the sheet of web material. Regarding instant claims 163 and 200, the predetermined dimension is also considered the length of the sheet of web material.

9. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) and in view of Stolmeier et al. (US 6257763), McMahon (US 6138439), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), May (US 5725312) and Malin (US 6183134).

Regarding instant claims 148, 169, 179, 187, 212 and 214, Thomas et al. teach a reclosable bag comprising a reclosable fastener structure having a first and second side panel and a gusseted bottom (See Figure 7). Each of the male and female reclosable fastener structures comprise a skirt structure having a distal portion. Thomas et al. further teach an opening located between the skirt structure and the side panel (Figure 7) through which a food product can be filled into the bag (Column 1, line 40).

The claims differ from Thomas et al. in reciting wherein the bag comprises a hood structure.

Buchman et al. is relied on to teach the concept of a hood (Figure 7, item 60) for the purpose of providing tamper evidence. Therefore to provide a hood to enclose the reclosable fastener structure of Thomas et al. would have been obvious for the purpose of providing additional means for tamper evidence.

Claims 148,169,179,187,212 and 214 further differ in the combination in reciting, wherein the hood is defined by areas of structural weakness located intermediate said fold in said hood and said first and second ends of the hood.

It is noted that Buchman et al. teach providing perforations to facilitate removal of the hood (figure 7, item 60 and paragraph 0067). In any case, Stolmeier et al. teach

providing areas of structural weakness for the purpose of facilitating removal of the hood and wherein the fastener structure extends into the hood structure (Figure 7, item 72). Also, McMahon et al. (Figure 19, item 132) teaches that it was conventional to provide structural weaknesses for removing a hood structure into which a pair of reclosable fastener tracks are extend. Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of modified Thomas et al.

The claims further differ from the combination of the prior art in reciting wherein the bag (and hood) comprise a single sheet of web material. May is relied on to teach a bag that comprises a hood which is made from a single sheet of continuous web material (see figure 1). Belmont et al., McMahon and Weeks have been relied on as discussed above in paragraph 6, to teach employing a single sheet of web material that can be used to form a covering/fold structure that covers the reclosable fastener structures and wherein the opening for filling product into the bag can be on a side of the bag. Weeks and Buchman et al. teaches this side filling concept, as discussed above in paragraph 6, while Weeks teaches the use of a single sheet of web material to make the covering element over the reclosable fasteners and to make the product containing portion of the bag. Therefore to make the hood and the bag of the combination of Thomas et al. and Buchman et al., from a single sheet of web material would have been an obvious matter of choice and/or design, since it has been known in

the art to make a bag and the hood that covers the reclosable fasteners from a single sheet of web material.

Furthermore, since the art already teaches employing a single sheet of material which can be used to make the product containing portion of the bag, as well as the covering structure for the reclosable fastener, while also having an opening on the side of the bag, through which the product can be filled into the bag, to therefore employ a single sheet would have been an obvious matter of choice and/or design to one having ordinary skill in the art. It is noted that Buchman already teaches that the opening is on the side of the bag structure, between the skirt structure and the side panel. Therefore, to employ a single sheet of web material for both the covering element and the bag, while still retaining this side opening required by Thomas would have been an obvious rearrangement of the particular orientation of the single bag structure for preserving a side opening to the bag taught by Thomas. This is further evidenced by Weeks, who teaches a side opening to fill the bag.

The claims further differ from the combination of references in reciting a backing strip coupled to one of the skirt structures and an opening between the backing strip and the side panel.

As discussed above, Thomas et al. teach a top opening formed between the skirt and the side panel for filling the bag with a food product. Malin teaches that it was conventional to seal the web material to an extending backing strip instead of directly to the skirt (Figure 3). Therefore, to include a backing strip that adheres to the skirt for the

same purpose as applicants, to closing the bag after filling with a product, would have been an obvious matter of choice/design to one having ordinary skill in the art.

Additionally, it is noted that Malin also teaches using the backing strip to secure the web material of the bag to the reclosable zipper, for the purpose of improving the sealability of the bag to the zipper structure (column 3, lines 13-30). Since Buchman et al. already teaches filling the product into the bag through an opening between the fastener skirt structure and the sheet of web material, to therefore employ a backing strip to seal the web material for the bag to the reclosable fastener structure, would have been further obvious to one having ordinary skill in the art, for the added purpose of ensuring that the bag material is effectively sealed to the reclosable fastener structure.

Thomas is silent in teaching a cheese bag, however, Thomas et al. teach filling and prepackaging the bag with a product. Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31), as does Belmont et al. (column 4, lines 62-64). Once it was taught that one can package products within the bag of Thomas et al. and based on the teachings of Provan et al. and Belmont et al., to package a conventionally packaged product, such as cheese would have been an obvious matter of choice and/or design that not have provided a patentable feature over the prior art.

Regarding claims 152-153 and 188-189, the skirt structures taught by Thomas et al. are integral to the reclosable fastener structure and thus coupled thereto. Regarding

claim 190, the skirt structures inherently have an inside and outside surface as well as upper and lower portions.

Regarding claims 154, 205, 206 and 210, Thomas et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two panels of the food bags comprise a multilaminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light of column 20, line 25 to column 21, line 8), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15). Nevertheless, Thomas et al. similarly teach tamper evidence on the skirt structures used to separate the skirt structures (Column 3, lines 56-65). Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a means of performing a similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 4 of Thomas et al. that the skirt (item 30 or 34) has an inside and outside surface.

Further regarding claims 205 and 206, which recite that the film is a multi-laminate film, it is noted that Belmont et al. also teaches the concept of employing multiple laminate films (column 3, lines 55-57 and column 4, lines 25-29). To therefore employ a multiple laminate film would have been an obvious matter of choice and/or design routinely determinable by experimentation for obtaining the desired properties that come as a result of employing multiple layers of films. Further regarding claim 206, which recites that one of the layers comprises a tear path, it is noted that Buchman et al., Stolmeier et al. and McMahon et al. already teach employing a tear path on one layer. Therefore at least one layer of a multilaminated film would still have comprised a tear path.

Regarding instant claims 155 and 193, combination of references teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, the combination of references as applied to the independent claims teach linear areas of structural weakness across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.), that are perforations having a predetermined pattern.

Regarding instant claims 157 and 194, since the combination of references teach using a continuous sheet of web material for the bag and the hood, it would have been obvious to one having ordinary skill in the art that the lines of structural weakness would also have been integral to the continuous sheet of web material.

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would had to have been perforated.

Regarding claims 207-209, Thomas et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 215, 216, 217 and 218, Thomas et al. teach a bottom comprising a gusset (Column 4, lines 37-43).

Regarding the references to Thomas et al. (US 6148588), Buchman et al. (US 20010053253) and Malin (US 6183134) it is noted that although the instant applicant claims priority back to provisional application 60133810 filed May 11, 1999, the claims to the backing strip were not disclosed prior to the PCT/US00/25393, filed September 15, 2000, which was a continuation in part application. Therefore the effective filing date of the instant applicant would be September 15, 2000.

10. Claims 191-192 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218, above, and in further view of Tilman (US 5024537), for the reasons given above in paragraph 7.

11. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218, above in paragraph 9, and in further view of Hayashi (US 6074097).

The reference and reasons for rejection are taken as applied above in paragraph 8.

Response to Arguments

12. On page 20 of the response, applicants urge that Buchman does not illustrate any perforations. It is noted however, that on paragraph 0067, Buchman teaches that it was advantageous to employ perforations for removing the fold/hood structure. Applicants further urge on pages 20-21 that Buchman cannot be cited for teaching perforations below the zipper assembly as required in each of the independent claims. It is noted however, that Buchman has only been cited to teach the use of perforations. Stolmeier et al. and McMahon teach perforations that are below the reclosable fastener structure.

13. On page 21 of the response, applicants urge that Stolmeier et al. teaches a separate hood, similar to Buchman and therefore the structural weaknesses are not in the single sheet of web material. It is noted however, that Stolmeier et al. has only been relied on to teach that it has been conventional to locate the structural weaknesses in the sheet of web material that covers the reclosable fasteners, below the reclosable

fasteners, so that when the covering/hood is removed, one can access the reclosable fasteners. Furthermore, it is noted that Belmont et al., McMahon and Weeks all teach the use of a single sheet of web material that results in the formation of a covering/hood structure over the reclosable fasteners. Both McMahon and Weeks also teach the use of perforations to remove the hood. For instance, figure 19 of the McMahon reference shows items 132 as perforations that are below the fastener structures. Also, Weeks discloses in figure 4, items 22 and 24 are also perforations. Therefore, to employ a single sheet would have been an obvious matter of choice and/or design.

14. Further on page 21, Applicants urge that May only suggest "in passing" that a single sheet may be used to form the bag. Nevertheless, May still teaches that a single sheet can be used and therefore provides a teaching that if one desired to sue a single sheet of material, that this would have been an obvious matter of choice and/or design.

15. Further on page 21, applicants urge that McMahon illustrates the bottom of the bag and the perforations positioned above the reclosable fastener and thus, applicants urge, such an orientation is completely opposite of what is required in each of the independent claims.

This argument has been considered but is not persuasive. It is noted that the bag shown in figure 19 of the McMahon reference is only upside down. Obviously, the bag would still have been opened through the reclosable fastener and the structural

weaknesses (132) are still below the reclosable fastener, when the bag is turned "right side up."

16. Further on page 22, applicants urge that the Examiner is relying on hindsight to make the above obviousness rejections of the claimed subject matter. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, applicants are employing conventional structural elements to make a particular type of bag. For instance, the art already teaches the use of a single sheet of web material, as well as the claimed location of the structural weaknesses below the reclosable fasteners and an opening on the side of the bag between the side panel and a skirt structure of one of the reclosable fasteners. Also, Malin teaches the advantages of employing a backing strip that has been coupled to the skirt structure of a reclosable fastener structure and which is subsequently used to secure the sheet of web material thereto. Therefore, applicants are employing features that have been conventionally employed in making a reclosable bag with a specific position for the fill opening and for the particular tamper evidence

features and to therefore employ these features would have been obvious to one having ordinary skill in the art, in view of the art taken as a whole.

Regarding the number of references employed to support the rejection of the claims, it is noted, as discussed above, that the features that the primary references appear silent in disclosing are conventional elements employed in the art of making reclosable bags with tamper evidence features. Therefore, in view of the art taken as a whole, to employ these conventional features would have been an obvious matter of choice and/or design. Further regarding the number of references, it is noted that, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. Where teachings relied upon to show obviousness were repeated in a number of reference, the conclusion of obviousness was strengthened. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case the references to May, Belmont et al., McMahon and Weeks all teach the use of a single sheet of web material to make the covering over the reclosable fastener structure as well as the product containing portion of the bag. Also, both Stolmeier et al., Buchman, McMahon and Belmont et al. teach the use of a covering element over the reclosable fastener structure, and Stolmeier et al. and McMahon teach the particular location of the structural weaknesses in the covering element over the reclosable fastener being below the reclosable fastener such that upon removal of the covering element the fastener extends above the rest of the bag.

17. On page 26 of the response, applicants urge that the skirt structures taught by Thomas are made out of the same material as the reclosable fastener, and therefore applicants urge that Thomas does not have a skirt structure, as disclosed in the present application.

This argument has been considered but is not persuasive. It is noted that the structures that are considered skirt structures in the Thomas reference are no different than those skirt structures shown in figure 45 (item 16) in applicants' drawings. That is, the skirt structures are integral with the reclosable fastener.

18. On page 27 of the response, applicants urge that Thomas attaches the bag sides to ribs and not to the fins. This argument has been considered but is not persuasive. It is firstly noted that the claims do not recite that the skirt structures are directly sealed to the bag sides. In any case, it is noted that the "ribs" taught by Thomas are sealant ribs which are used to facilitate sealing the bag to the fins (i.e. skirt structures) (see column 4, line 61 to column 5, line 12). Obviously, Thomas teaches that applying a sealant facilitates securing the panels of the bag to the skirt structures of the reclosable fastener. Depending on the particular materials employed, if one did not require a sealant material to couple the side panel of the bag to the skirt structure, then to eliminate this element and its function would have been obvious to the ordinarily skilled artisan.

19. Further on page 27 of the response, applicants urge that Thomas does not require nor does it suggest that a hood structure should be applied to provide tamper evidence. Applicants further urge that Thomas already discloses a tamper evidence structure and therefore one having ordinary skill in the art would not look to modify Thomas for the purpose of tamper evidence by adding a separate hood structure as taught by Buchman since, applicants urge, this would be a duplication of tamper evidence structures and would still not provide a bag and hood structure composed of a single web material.

This argument has been considered but is not persuasive. It is noted that Buchman, Stolmeier and McMahon all teach the use of more than one tamper evidence structure. For instance, Buchman also teaches that the skirt structures can be secured together (Figure 7, item 72). McMahon also teaches providing a peel seal between the skirt structures (figure 19, item 136) as well as a covering element over the reclosable fastener structures. To therefore employ multiple tamper evidence structures would have been an obvious to one having ordinary skill in the art for their art recognized function of providing added security that the package has not been tampered with.

20. On page 28 of the response, applicants urge that the examiner is relying on hindsight to make the obviousness rejections and has used elements from at least six different references to support the rejection of applicants' claims. Therefore, applicants believe that the examiner is basing the rejections on the mere identification in the prior art of the individual components of the claimed limitations and has not made particular

findings as to the reason a skilled artisan, with no knowledge of the claimed invention, would have selected the components for a combination in the matter claimed in the present application.

This argument has been considered but is not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, it is noted that Thomas et al. already teaches the concept of employing an opening between the skirt structures and the side panel of the bag. To employ a covering element over the reclosable fasteners would have been obvious, as taught by Buchman, Stolmeier et al. and McMahon for providing added tamper evidence, especially since Thomas et al. teaches the need for tamper evidence. To employ a single sheet to make the bag and hood structure would also have been an obvious matter of choice and/or design, especially since May, Belmont and Weeks all teach that it was conventional in the art to employ a single sheet of material to make

both the covering element over the fastener structures as well as the product containing portion of the bag. Weeks even teaches using a single sheet of material with an opening on the side of the bag for filling a product there through. Regarding a backing strip, Malin teaches the advantages of employing a backing strip, as discussed above. Therefore, applicants are employing features that have been conventionally employed in making a reclosable bag with a specific position for the fill opening and for the particular tamper evidence features and to therefore employ these features would have been obvious to one having ordinary skill in the art, in view of the art taken as a whole.

Regarding the number of references employed to support the rejection of the claims, it is noted, as discussed above, that the features that the primary references appear silent in disclosing are conventional elements employed in the art of making reclosable bags with tamper evidence features. Therefore, in view of the art taken as a whole, to employ these conventional features would have been an obvious matter of choice and/or design. Further regarding the number of references, it is noted that, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. Where teachings relied upon to show obviousness were repeated in a number of reference, the conclusion of obviousness was strengthened. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case the references to May, Belmont et al., McMahon and Weeks all teach the use of a single sheet of web material to make the covering over the reclosable fastener structure as well as the product containing portion of the bag. Also, both Stolmeier et al., Buchman, McMahon and Belmont et al. teach the use of a covering element over

the reclosable fastener structure, and Stolmeier et al. and McMahon teach the particular location of the structural weaknesses in the covering element over the reclosable fastener being below the reclosable fastener such that upon removal of the covering element the fastener extends above the rest of the bag.

21. Regarding the dependent claims, applicants urge that since the dependent claims are patentable in view of the arguments provided with respect to the claims from which they depend. Applicants thus reiterate their comments regarding the independent claims, with respect to the dependent claims. These arguments are not persuasive for the reasons given above with respect to the independent claims.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5826401 discloses a single sheet of web material that also includes a side seam (figure 3a and 4a). US 6293896 discloses a single sheet which covers the reclosable fastener structure and forms the product containing portion of the bag (figure 3). US 6412254 discloses a fold that covers the fastener structure wherein the fold also comprises the bag (figure 2). US 6467956 also discloses two sheets that results in the formation of a covering element over the fastener structure and the product containing portion of the bag.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-

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6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/V. T./

Examiner, Art Unit 1794

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1794